IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 10TH AUGUST 2006 / 19TH SRAVANA 1928

CRL.A.No. 3 of 2001(A)

(AGAINST THE ORDER IN SC.98/1998 of ADDL.SESSIONS COURT, PATHANAMTHITTA)

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APPELLANT/ACCUSED:

PRATHAP @ PRATHAPASIMHAM,
S/O.RAGHAVAN PILLAI,
THOTTATHIL VEEDU,
MELUKARA MURI,
KOZHENCHERRY VILLAGE.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.V.DILEEP

RESPONDENT / COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT BUILDING, ERNAKULAM.
(CIRCLE INSPECTOR OF POLICE, KOZHANCHERRY)

BY SHRI.K.J.GEORGE, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2006, THE COURT ON 10/08/2006 DELIVERED THE FOLLOWING:

CRL.APPEAL NO.3/2001

ORDER ON CMP NO.52/2001 IN CRL.APPEAL NO.3/2001

DISMISSED.

10/08/2006 SD/- (K.HEMA, JUDGE)

//TRUE COPY//

PA TO JUDGE.

K. HEMA, J.

CRL.APPEAL No. 3 OF 2001

Dated this the 10th day of August, 2006.

J U D G M E N T

Appellant is the sole accused in S.C. No. 98/98 on the file of the Additional Sessions Court, Pathanamthitta. He was charge sheeted for offence under Section 449 and 302 of Indian Penal Code. After trial, he found guilty of offence under Section 448 and 304 Part II of the Indian Penal Code. He was sentenced to undergo rigorous imprisonment for six months for the offence under Section 448 of IPC and rigorous imprisonment for five years for offence under Section 304 Part II of IPC and pay a fine of Rs. 2,000/-, in default of which he has to suffer simple imprisonment for one month. All sentence were run concurrently. The said conviction and sentence are challenged in this appeal.

2. According to the prosecution on 16.05.1997, the deceased Sivan Pillai along with PW1 went to the house of PW2 and PW3, husband and wife and was engaged in some electric work. The son of PW2 and PW3 had arranged two fans and electric tubes to be fitted in the house and he had requested the deceased to do the work in the house. The deceased had gone to the house along with PW1 for the said work in the after noon and they worked upto 9.30p.m. The

accused went to the house of PW2 for collecting donation for the public library fund. He returned and thereafter came back to the house at 9.30p.m and went to the deceased and questioned him as to why he had not worked in the house of his aunt after taking money from her. The deceased Sivan Pillai was dragged by the accused to the courtyard of the house of PW2 and PW3, stating that there is no point in keeping the deceased alive. He stabbed the deceased Sivan Pillai with a screw driver, M.O.1, which was taken from the deceased Sivan Pillai. The deceased immediately fell down on sustaining injury on the chest.

3. The accused left the weapon M.O.1 on the scene and went away. PW2 and PW3 made hue and cry, people gathered and PW1 went to the police station and gave First Information Statement, Exhibit P1. PW9 recorded the statement at 11.30p.m on the same day of occurrence and registered a crime, the investigation was conducted, the relevant documents and materials were seized, the accused was arrested and charge sheet was laid against the accused under Section 449 and 302 of IPC.

4. The prosecution examined PW1 to PW11, marked Exhibits P1 to P7, M.O. 1 to M.O.6 series on his side. No oral or documentary evidence was adduced on the side of the accused. The court on an analysis of the evidence found that the offence committed by the

accused is falling under Section 448 IPC and also under Section 304 Part II of IPC. According to the court below, it cannot be said that the accused entered into the house of PW2 and PW3 in order to commit an offence punishable with death. The court also held that the accused gave a single stab with M.O.1 over the chest and it can be said that the act was done with the knowledge that it is likely to cause death without intention to cause death. An offence under Section 304 Part II of IPC was therefore held to be established in this case.

5. Learned counsel appearing for the appellant vehemently contended that the court erred in placing reliance upon the oral evidence of PW2 and PW3 to convict the accused. Prosecution examined PW1 to PW3 to prove the case. PW1 is the person who allegedly went to the scene of occurrence along with deceased Sivan Pillai to do the wiring work as called by PW2's son. According to the prosecution, he was present along with the deceased throughout till his death. He has given the First Information Statement, Exhibit P1. PW1 in evidence, admitted that he had given Exhibit P1, First Information Statement to the police and identified the signature in Exhibit P1.

6. Though the statement, Exhibit P1, would contain the detailed narration of the incident, he deposed that he did not see the incident. He also said that he did not know when the deceased died or how he

died. He only said that deceased died from the house of PW2's son. In a later context, he also said that he was in the house of PW2 on the date on which the deceased Sivan Pillai died and that he had gone there for wiring work along with Sivan Pillai on the date of occurrence. To certain questions put to him, he pleaded ignorance. For example, he deposed that he did not know whether deceased Sivan Pillai was stabbed to death on 16.05.1997 at about 9.30p.m. However, he deposed that at about 3.00p.m on that day, the accused and few others had come to the house of PW2 for collection for the public library. He had also stated that he did not know whether the screw driver was brought by the deceased Sivan Pillai for the work. Though the witness was declared hostile, it is clear from his evidence and certain admissions that he had gone to the house of PW2 on the crucial day for the wiring work along with the deceased Sivan Pillai. It has also revealed that accused had gone there to collect money for public library.

7. The evidence of PW2 and PW3, the husband and wife is consistent with the prosecution case. Both of them deposed that the incident happened on 16.05.1997 at about 9.30p.m. Their evidence will disclose at about 3.00p.m. The deceased Sivan Pillai along with PW1 came to their house for electric wiring work and the accused and

others had come there for making some collection for the public library. Thereafter, the accused came back again at about 9.30p.m, while the deceased was working. The accused asked the deceased Sivan Pillai as to whether he had not completed the work and thereafter he had questioned him as to why he did not complete the work in his aunt's house, after taking money from her. By saying this, deceased was pulled to the courtyard and thereafter stating that there is no point in keeping him alive, he had taken a screw driver from the deceased and stabbed him on his chest. Deceased Sivan Pillai fell down and sustained injury. The accused threw away the screw driver, M.O.1 to the courtyard and left the place. The deceased Sivan Pillai was struggling for life, when PW2 sprinkled some water on his face thereafter he stopped moving. Both of them cried aloud and neighbours came there and PW1 went to inform the police.

8. Both PW2 and PW3 have corroborated each other in all material particulars. They have given evidence consistent with prosecution case. No material contradictions are brought out from evidence. Nothing is brought out from the evidence of PW2 and PW3 to show that they are falsely implicating evidence. Nothing is brought out from the evidence of PW2 and PW3 to show why they are perjuring against the accused. Some weak suggestions are made to

PW2 that one panchayath ward member Santha Kumari is known to them and that a false case has been foisted against the accused. There is absolutely nothing in the evidence to indicate that the said Santha Kumari had anything to do with the registration of the crime or for implicating the accused in an offence of this nature. Anyway, their evidence will not show that either PW2 or PW3 had any motive against the accused to falsely implicating him in an offence of murder.

9. According to learned counsel for the appellant, their evidence cannot be believed for the reason that they deposed before the court that the deceased was taken to the hospital after the incident. But it is false, since he died on the spot. It is also submitted that no independent witness was examined from the neighbourhood and hence their evidence cannot be relied upon. It is true that no other witnesses were examined to prove the occurrence other than PW1 to PW3. But they are the most natural witnesses to the occurrence and they have no interest in the prosecution or in the deceased Sivan Pillai and nothing is brought out to that effect. No circumstance is pointed out as to why PW2 and PW3 are perjuring against the accused. Therefore, their evidence itself is independent and on scanning their evidence, I do not find it necessary to seek corroboration from any other independent sources.

10. Nothing is brought out from the cross examination that there was any chance for any other person to witness the incident. The incident occurred within a very short span of time and with one stab, the accused had been done away with. Therefore, in such circumstance, the mere non examination of any other person from the neighbourhood cannot be taken as a ground to reject the evidence of PW2 and PW3, especially since they cannot be treated as interested witnesses. The only fact that they gave evidence that the deceased was taken to the hospital also cannot be made a ground to disbelieve PW2 and PW3, especially since one cannot forget for a moment that the deceased was removed to the hospital for postmortem examination. It is needless to say that the deceased did not require any treatment, since he died on the spot and the evidence given by PW2 and PW3 that the deceased was taken to the hospital is therefore not a circumstance to reject the evidence of these witnesses.

11. The other circumstance pointed out by the learned counsel for the accused is that PW2 and PW3 were not questioned by the police at the time of preparation of the inquest report. It is true that it is admitted that these witnesses were not questioned at the time of inquest. But an omission on the part of investigating officer to question the witnesses may not be sufficient to discard the evidence of

eye witnesses as a whole. In this regard, the First information Statement assumes importance. Exhibit P1, First Information Statement had reached the court on the very next day at 5.50p.m and it is admittedly given by PW1 which contained the entire narration about the incident including the presence of PW2 and PW3. Their presence in the scene cannot be doubted in the light of this circumstance and there is no reason for them to speak anything falsely.

12. The other reason stated is that there is no explanation of the injuries on the deceased which also throws doubt on the veracity of the evidence given by PW2 and PW3. The postmortem report, Exhibit P3 and the evidence of the doctor, PW5 would go to show that apart from fatal injuries sustained by the deceased Sivan Pillai on the chest, he had also other six abrasions on his body. According to the defence, these injuries are not explained by PW2 and PW3. PW2 and PW3 while examined in court gave evidence that the deceased Sivan Pillai was struggling for life after the stab. As per the oral evidence of the eye witnesses as well as the medical evidence, the deceased Sivan Pillai had sustained a fatal injury and died on the spot and it is only probable that he must have been struggling. PW2 deposed that he was rolling on the ground. This possibility also cannot be ruled out and

postmortem certificate and the evidence of PW4 and PW5 will go to show that certain particles were found over the body at several places. Looking at the nature of injury sustained by the deceased Sivan Pillai which are minor in nature as seen from the postmortem certificate, I am of the view that presence of such injuries may not be made a ground to doubt the veracity of evidence given by PW2 and PW3. The mere non explanation of some minor injuries on the body of the deceased will not be sufficient to discard the oral evidence of eyewitness who have no particular motive to implicate the accused falsely and who have no interest in the success of the prosecution.

13. The other circumstance pointed out by the learned counsel for accused is that the investigating officer's evidence would reveal that there was no blood on the spot. The scene mahazar was prepared by PW10, the Circle Inspector who did not notice any drop of blood at the scene. A reading of the evidence of the doctor particularly, the nature of fatal injury sustained by the deceased would go to show that there is little chance for blood dripping in the scene. The external injury is a very minor puncture injury having only a size of 0.5cm x 0.2cm. The wound entered the left chest cavity and it contained 1.5 litres of fluid blood and 250 gms of blood clot. The pericardial cavity was also filled up with blood clots, approximately

100gms. The postmortem certificate shows that the blood was seen 'smeared' around the injury minimally, externally. There is absolutely no reason to disbelieve this evidence of the doctor. It has to be concluded from the medical evidence that the injury was only bleeding minimally, there was only smearing of blood externally.

14. Looking at the nature of the injury, the size of the injury, the weapon used particularly the collection of blood in the chest cavity, it is only possible and probable to infer that there could be no dripping of blood from the injury but there could only be smearing of blood. In my view, this evidence is fully corroborates the evidence of investigating officer who prepared the scene mahazar. I am fully satisfied that there was no blood on the scene and the investigating officer has correctly reported this fact. The evidence given by PW2 and PW3 that there was bleeding from the wound would reconcile with the minimal bleeding which is noted by the doctor. Nobody has a case where blood was flowing from the injury so as to collect it in the courtyard of the house of PW2.

15. Taking all these facts into consideration, I am fully satisfied that the evidence of PW2 and PW3, the eyewitnesses who are independent witnesses to the occurrence is corroborated by other evidence like medical evidence, the evidence of the investigating

officer who prepared the scene mahazar, the weapon used, M.O.1 etc. It is also relevant to note that PW2 and PW3 stated that the accused left the screw driver, M.O.1 at the scene and this was seized by the police officer at the time of preparing the scene mahazar. M.O.1 was seized from the courtyard of the house. This circumstance also corroborates the evidence of PW2 and PW3.

16. Learned counsel for the accused also submitted that there is some manipulation in the First Information Statement, since Exhibit P1 contains the full details even though it is recorded within two hours of the incident. He deposed it is highly improbable that the entire narration would be there in such statement which is given within two hours. According to him, this document is falsely fabricated, since it reached the court at 5.50p.m on the next day. I do not find any reason to accept this argument. Exhibit P1 is a statement which is admittedly given by PW1. The Police Officer, PW9, has also given evidence that he has recorded the First Information Statement. Both PW1 and PW9 have deposed that Exhibit P1 is the statement given by PW1 and neither PW9 nor PW1 had any reason to concoct a statement like Exhibit P1.

It is evident that PW1 deposed certain facts to support the defence at the trial and he was declared hostile since he had gone

against the contents of the statement given by him. It is highly improbable that such a person would falsely fabricate the First Information Statement like Exhibit P1. I can only reject the argument advanced in this regard. Concluding my discussion I hold that there is absolutely no reason to interfere with the finding of guilty, conviction or even sentence. The state has not filed any appeal. In the above circumstances, I confirm the conviction and sentence passed against the appellant.

This appeal is dismissed.

K. HEMA, JUDGE

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